

BOARD OF APPEALS
for
MONTGOMERY COUNTY
Stella B. Werner Council Office Building
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Case No. A-5851

**APPEAL OF JONATHAN K. LANDECK, KATHRYN L. MINTZ,
VICTOR E. NAVA, MARIA L. MARQUEZ AND
BROOKDALE CITIZENS ASSOCIATION**

OPINION OF THE BOARD
(Hearing held April 2, 2003)
(Effective date of Opinion: July 14, 2003)

Case No. A-5851 is an administrative appeal in which the appellant charges administrative error on the part of the County Department of Permitting Services (DPS) in its issuance of a building permit.

A public hearing was held pursuant to Section 59-A-4.3 of the Zoning Ordinance. Assistant County Attorney, Malcolm Spicer, represented Montgomery County, Maryland. Joshua Haines, owner of the subject property, appeared, as well as Victor Nava and Kathryn Mintz.

Decision of the Board: Administrative appeal **denied**.

FINDINGS OF FACT

The Board finds by a preponderance of the evidence that:

1. This appeal concerns a building permit issued by DPS for property located at 5004 Dalton Road, Chevy Chase, Maryland 20815. The property is located at Lot 12, Block 6 in the R-60 zone, and is approximately 42.5 feet wide.

2. The subject property was part of a larger parcel owned by an individual who died in approximately 1906. Following the death of the owner's surviving spouse during the 1920s, the parcel was divided by a partition action in the Circuit Court of Montgomery County, Equity No. 3876. The Circuit Court entered a judgment of partition and created a plat subdividing the parcel (Exhibit 6). The plat created Lot 12 and surrounding properties (Exhibit 6).

3. On or about 1931 the property was conveyed to Genevieve P. Modale, and the first deed on the property was recorded on or about 1936 (Exhibit 8-3)¹.

4. Sometime during 2002, the property owner, through his construction company, applied to DPS for a building permit. DPS granted permit 282705 on or about December 4, 2002, to construct a single-family dwelling at the subject property. DPS performed a "wall check" at the property on or about January, 2003 and confirmed that the lot dimensions had not changed since the 1930s and the width was still about 42.5 feet.

5. Appellants filed this appeal on or about January 2, 2003. Appellants Jonathan K. Landeck and Kathryn L. Mintz reside at 5006 Dalton Road, Chevy Chase, Maryland. Appellants Victor E. Nava and Maria L. Marquez reside at 5000 Dalton Road, Chevy Chase, Maryland. William Geiger is President of the Brookdale Citizens Association and filed this appeal on behalf of the Association.

6. Appellants each contend that the permit was improperly issued because the property is not situated on a buildable lot.

CONCLUSIONS OF LAW

7. Section 59-B-5.1 of the Zoning Ordinance provides in pertinent part:

"Sec. 59-B-5.1. Buildable lot under previous ordinance.

Any lot that was recorded by subdivision plat prior to June 1, 1958, or any lot recorded by deed prior to June 1, 1958 that does not include parts of previously platted properties, and that was a buildable lot under the law in effect immediately before June 1, 1958, is a buildable lot for building a one-family dwelling only, even though the lot may have less than the minimum area for any residential zone. Any such lot may be developed under the zoning development standards in effect when the lot was recorded . . ."

The subject property was recorded by a subdivision plat in 1923 and by a deed in 1931 or 1936. Since the lot was recorded by subdivision plat and by deed prior to June 1, 1958, it qualifies as a buildable lot for a single-family dwelling under this provision.

¹It is not clear whether the first deed was recorded in 1931 or 1936. The County's Pre-Hearing Submission states that a deed was recorded in August, 1931. However, during the County's opening statement, Mr. Spicer stated that the first deed was recorded on November 17, 1936. For purposes of the Board's analysis, this discrepancy is immaterial.

8. Appellants maintain that DPS should have applied the current development standards (such as current setback requirements) when it considered the permit application. But under Section 59-B-5.1, this lot may be developed under the zoning development standards in effect in 1931 or 1936, the time the lot was recorded by deed in the land records. The development standards in effect during the 1930s are contained in the County's 1930 Zoning Ordinance. A copy of this Ordinance was made part of the record in this case and is marked Exhibit 9. Under the 1930 Ordinance, the side-yard setback requirement is generally seven feet (p. 6, para. 3, Exhibit 9). However, the 1930 Ordinance also provides for certain exceptions to the general seven foot requirement. These exceptions are contained in "Section VIII", p. 10 of the Ordinance and state, among other things, that if a lot is between 40 and 50 feet in width, the side-yard setback requirement is reduced to five feet. Since the lot in this case is 42.5 feet wide, the five foot setback would apply. There is no dispute that DPS issued the building permit based upon a five foot side yard setback. Therefore, the correct set-back requirement was applied and the permit was not improperly issued. The appeal is **DENIED**. Accordingly,

On a motion by Allison Ishihara Fultz, seconded by Louise L. Mayer, with Donna L. Barron, Angelo M. Caputo and Donald H. Spence, Jr., Chairman, in agreement, the Board adopts the following resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 14th day of July, 2003.

Katherine Freeman

Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.